

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Petitioner,

-against-

MEMORANDUM AND ORDER  
07-CR-0401 (JS)

ELIJAH SANFORD,

Respondent.

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APPEARANCES

For Petitioner: Edward S. Zas, Esq.  
Federal Defenders of New York  
Federal Defenders Division  
52 Duane Street, 10th Floor  
New York, New York 10007

For Respondent: Anthony Bagnuola, Esq.  
United States Attorney's Office  
Eastern District of New York  
610 Federal Plaza  
Central Islip, New York 11722

SEYBERT, District Judge:

Elijah Sanford ("Petitioner") was charged by Complaint for violating the Hobbs Act, 18 U.S.C. § 1951, waived indictment pursuant to Federal Rule of Criminal Procedure 7(b), and pled guilty to Count One of the Information, Robbery Conspiracy in violation of 18 U.S.C. §§ 1951(a), 2 and 3551, et seq. pursuant to a Plea Agreement with the Government. (See Compl., D.E. 1; Info., D.E. 11; Guilty Plea, D.E. 12; Waiver of Indictment, D.E. 13.) Following his guilty plea, Petitioner was sentenced to one hundred

and forty-eight (148) months of imprisonment, followed by three (3) years supervised release. (See J., D.E. 15.)

On May 1, 2008, Petitioner, acting pro se, petitioned this Court to vacate, set aside, or correct his conviction and sentence pursuant to 28 U.S.C. § 2255. (See Pet., Sanford v. United States, No. 08-CV-1788, D.E. 1.) On August 14, 2009, the Court denied the Petition. (See Mem. & Dec., No. 08-CV-1788, D.E. 21.) Thereafter, on June 9, 2016, in light of the recent decision in Johnson v. United States, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015), the Chief Judge of the Eastern District of New York issued Administrative Order 2016-05, which permitted the Federal Defenders of New York and CJA counsel to file “placeholder” petitions on behalf of prisoners with potentially meritorious claims on or before June 27, 2016. On June 13, 2016, the Federal Defenders filed the instant Petition, a “placeholder” motion on Petitioner’s behalf, petitioning this Court for a second time to vacate, set aside, or correct his conviction and sentences pursuant to 28 U.S.C. § 2255. (See Pet., D.E. 41.) Thereafter, on July 10, 2016, Petitioner filed a motion in the Court of Appeals for the Second Circuit, requesting leave to file a successive petition for relief under 28 U.S.C. § 2255. (See Gov’t Response, D.E. 48, at 2.) On November 9, 2016, the Court of Appeals denied Petitioner’s motion seeking leave to file a successive petition

pursuant to 28 U.S.C. § 2255. See Sanford v. United States, 841 F.3d 578 (2d Cir. 2016) (per curium).

On August 28, 2019, the Government responded to Petitioner's successive § 2255 Petition (see Pet.) and argued that the Court lacks jurisdiction to decide Petitioner's motion on the grounds that the Second Circuit denied Petitioner's motion for leave to file the Petition. (See Gov't Response.) On September 3, 2019, the Federal Defenders, on behalf of Petitioner, filed a letter with the Court agreeing with the Government, and conceding that the Court lacks jurisdiction to decide the current Petition as the Court of Appeals denied him leave to file it. (See Letter, D.E. 49.)

Accordingly, as the parties are in agreement that this Court lacks jurisdiction to hear Petitioner's motion, the Petition (D.E. 41) is DENIED. The Clerk of the Court is directed mark this matter CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: January 22, 2020  
Central Islip, New York